

THE HONOURABLE Mr. JUSTICE D.S.R. VARMA

WRIT PETITION No.842 OF 2006

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DATE: 17-01-2006

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Between:

N. Venkanna, S/o. Ananthaiah,
age 68 years, Occ: Retd. Principal of Govt. College,
R/o. H.No.12-47/A, R.K. Puram Colony,
L.B. Nagar Municipality, Ranga Reddy District
& two others

.. Petitioners

AND

The Joint Collector, Ranga Reddy District,
Lakdikapool, Hyderabad & 6 others

.. Respondents

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ORDER:

This Writ Petition has been filed seeking declaration to declare order dated 06-12-2005 passed by the Joint Collector, Ranga Reddy District, Lakdikapool, Hyderabad-Respondent No.1 as illegal, arbitrary and against the well settled principles of law and consequently quash the same.

The main grievance of the petitioner is that respondent No.1 directed the petitioners to approach the Civil Court and obtain order in order to show that they are real owners of the land admeasuring Ac.1-10 guntas of land in Survey No.149 of Badangpet village (the then Hayathnagar Taluq), Saroornagar Mandal, Ranga Reddy District, which is against the well-settled principles of law.

It appears that the petitioners have been in possession of the land in question by virtue of the registered sale deed said to be executed by respondents 4 to 7 herein and others. Basing on the said sale transaction, they made an application to the Mandal Revenue Officer-Respondent No.3 for mutation of the said land in their names and the 3rd respondent after conducting an enquiry allowed the same which was confirmed by the Revenue Divisional Officer-Respondent No.2 and accordingly issued mutation proceedings in favour of petitioners 2 and 3 vide separate proceedings. Against which, respondents 4, 5 and 7 have filed an appeal before the

2nd respondent contending that they are absolute owners of the land in question and the same was dismissed confirming the orders passed by the 3rd respondent. Aggrieved by the same, respondents 4 to 7 have preferred a revision before the 1st respondent, who by order dated 06-12-2005 allowed the revision setting aside the orders of respondents 2 and 3 directing the parties to approach Civil Court for resolution of their dispute.

Heard both sides and perused the material available on record.

It is not proper for the revenue authorities to make entries in the revenue records without following the procedure prescribed under law, and even if they make any entries, the same would be subject to the outcome of the suit, if any, filed.

Learned counsel for the petitioners brought to the notice of this Court that respondents 4 and 5 had filed O.S. No.56 of 1999 before the Principal Junior Civil Judge Court, Ranga Reddy District, Hyderabad and the same was dismissed implying thereby that the sale transaction between the petitioners and respondents 4 to 7 and others was upheld.

In response, the learned Government Pleader for Revenue brought to the notice of the Court that the suit filed by respondents 4 and 5 was only for a limited purpose of perpetual injunction but not for title.

It is well settled principle of law that in a suit for permanent injunction when the issue of injunction alone is decided as 'substantial issue', and when the issue of title was decided only as a 'collateral and incidental issue', but not as a 'direct and substantial issue', then the losing party can file a separate suit for declaration of title, notwithstanding the adverse finding recorded by the Court regarding the title in the suit for injunction. In this context, it is apposite to notice the pertinent observations of the Supreme Court in **GRAM PANCHAYAT, NAULAKHA v. UJAGAR SINGH**, while considering the provisions of Section 11 of Code of Civil Procedure, which run thus:-

“We may also add one other important reason which frequently arises under Section-11 C.P.C. The earlier suit by the respondent against the Panchayat was only a suit for injunction and not one on title. No question of title was gone into nor decided. The said decision cannot, therefore, be binding on the question of title. See in this connection *Sajjadanashin Sayed v. Musa Dadabhai Ummer* (2000) 3 SCC 350: (2000 AIR SCW 901: AIR 2000 SC 1238) where this Court, on a detailed consideration of law in India and elsewhere held that even if, in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a latter suit or proceedings where title is directly in question, unless it is established that it was 'necessary' in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was found or based on the finding on title. Even the mere framing of an issue on title may not be sufficient as pointed out in that case.”

This Court is not aware as to whether such a finding was recorded in the said suit as regards question of title. However, the fact remains that the said suit was only for a limited purpose of injunction.

In my considered view, any finding recorded in a suit for mere injunction cannot be conclusive as regards title. Further more, it is to be noted that the said suit was filed only by respondents 4 and 5 whereas the suit transaction was said to be entered into between respondents 4 to 7 and others on one side and the petitioners on the other, therefore the necessary parties are not impleaded to the suit and in their absence, any judgment passed in the said suit will not bind them.

For the aforesaid reasons, I am of the considered view that the impugned order dated 06-12-2005 passed by the 1st respondent does not suffer from any infirmity or illegality.

Accordingly, the Writ Petition is dismissed. No costs.

17-01-2006

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